

DRAFT

DEPARTMENT OF JUSTICE POLICY
CONCERNING EMPLOYEE OBLIGATIONS
TO PROTECT CLASSIFIED INFORMATION
AND SUBMIT TO PREPUBLICATION REVIEW

All persons granted access to classified information in the course of their employment at the Department of Justice are required to safeguard that information from unauthorized disclosure. This nondisclosure obligation is imposed by statutes, regulations, access agreements, and the fiduciary relationships of the persons who are entrusted with classified information in the performance of their duties. The nondisclosure obligation continues after DOJ employment terminates.

As an additional means of preventing unlawful disclosures of classified information, the President has directed that all persons with authorized access to Sensitive Compartmented Information (SCI) be required to sign nondisclosure agreements containing a provision for prepublication review to assure deletion of SCI and other classified information. SCI is information that not only is classified for national security reasons as Top Secret, Secret, or Confidential, but also is subject to special access and handling requirements because it involves or derives from particularly sensitive intelligence sources and methods. The prepublication review provision requires that DOJ employees granted access to SCI submit certain material

DOJ Review Completed

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to the Department, whether prepared during or subsequent to DOJ employment, prior to its publication to provide an opportunity for determining whether an unauthorized disclosure of SCI or other classified information would occur as a consequence of its publication.

The obligations not to disclose classified information and to comply with agreements requiring prepublication review have been held by the Supreme Court to be enforceable in civil litigation. Snepp v. United States, 444 U.S. 507 (1980).

The purpose of this statement is to explain and clarify DOJ policies concerning implementation of the prepublication review program.

1. It must be recognized at the outset that it is not possible to anticipate each and every question that may arise. The Department will endeavor to respond, however, as quickly as possible to specific inquiries by present and former employees concerning whether specific materials require prepublication review. Present and former employees are invited to discuss their plans for public disclosures of information that may be subject to these obligations with authorized Department representatives at an early stage, or as soon as circumstances indicate these policies must be considered. All questions concerning these obligations should be addressed to the Counsel for Intelligence Policy, Office of Intelligence Policy and Review. The official views of the Department on these matters may only be expressed by the Counsel

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for Intelligence Policy and persons should not act in reliance upon the views of other Department personnel.

2. Employees with access to SCI will be required to sign agreements providing for prepublication review. Prepublication review is required only as expressly provided for in an agreement. However, all persons who have had access to classified information have an obligation to avoid unauthorized disclosures of such information and are subject to enforcement actions if they disclose classified information in an unauthorized manner. Therefore, present or former employees are encouraged voluntarily to submit material for prepublication review if they believe that such material may contain classified information even if such submission is not required by a prepublication review agreement. Where there is any doubt, present and former employees are urged to err on the side of prepublication review to avoid unauthorized disclosures and for their own protection.

3. Present or former employees who have signed agreements providing for prepublication review are required to submit any material prepared for disclosure to others that contains or purports to contain:

- (a) any SCI or other classified intelligence reports or estimates; or
- (b) any information concerning intelligence activities, sources or methods to which the individual had access in the course of an employment, contract or

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other relationship with the United States Government.

4. A person's obligation to submit material for prepublication review remains identical whether such person actually prepares the material or causes or assists another person, such as a ghost writer, spouse or friend, or editor in preparing the material. Material described in paragraph 3 must be submitted for prepublication review prior to discussing it or showing it to a publisher, co-author, or any other person who is not authorized to have access to it. In this regard, it should be noted that a failure to submit such material for prepublication review constitutes a breach of the obligation and exposes the author to remedial action whether or not the published material actually contains SCI or classified information. See Snapp v. United States, supra.

5. The requirement to submit information or materials for prepublication review is not limited to any particular type of material or disclosure. Written materials include not only books, but all other forms of written materials intended for public disclosure, such as (but not limited to) newspaper columns, magazine articles, letters to the editor, book reviews, pamphlets, and scholarly papers. Because fictional treatment may convey factual information, fiction is also covered if it is based upon or reflects information described in paragraph 3.

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6. Oral statements are also included when based upon written material, such as an outline of the remarks. There is no requirement to prepare such material for prior review, however, unless there is reason to believe in advance that oral statements may contain SCI or other classified information. Thus, a person may participate in an oral presentation of information where there is no opportunity for prior preparation or contemplation (e.g., news interview, panel discussion) unless there is reason to believe in advance that such oral expression may refer to or contain SCI or other classified information. This recognition of the problems with oral representations does not, of course, exempt present or former employees from liability for any unauthorized disclosure of SCI or classified information that may occur in the course of even extemporaneous oral expressions.

7. Material that consists solely of personal views, opinions or judgments and does not contain or imply any statement of fact that would fall within the description in paragraph 3 is not subject to the prepublication review requirement. For example, testimony to the Congress, public speeches or publication of articles on such topics as proposed legislation or foreign policy do not require prepublication review as long as the material does not directly or implicitly constitute a statement of an informational nature regarding SCI, classified intelligence reports or estimates, or intelligence activities, sources or methods. Of course, in some circumstances the expression of

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"opinion" may imply facts and thus be of such a character as to require prior review.

8. Obviously, the purposes of prepublication review will be frustrated where the material in question already has been disseminated to unauthorized persons. Comparison of the material before and after the review would reveal which items of classified information, if any, had been deleted at the Department's request. Consequently, the Department will consider these obligations to have been breached in any case, whether or not the written material is subsequently submitted to the Department for prepublication review, where it already has been circulated to publishers or reviewers or has otherwise been made available to unauthorized persons. While the Department reserves the right to review such material for purposes of mitigating damage that may result from the disclosure, such action shall not prevent the United States Government and the Department from pursuing all appropriate remedies available under law as a consequence of the failure to submit the materials for prior review and/or any unauthorized disclosure of SCI or classified information.

9. Materials submitted for prepublication review will be reviewed solely for the purpose of identifying and preventing the disclosure of both SCI and other classified information. This review will be conducted in an impartial manner without regard to whether the material is critical or favorable to the Department. No effort will be made to delete embarrassing or critical

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statements that are unclassified. Materials submitted to the Office of Intelligence Policy for review will be disseminated to other persons or agencies only to the extent necessary to identify classified information.

10. The Counsel for Intelligence Policy will respond substantively to prepublication review requests within 30 working days. Priority shall be given to reviewing speeches, newspaper articles, and other materials that the author seeks to publish on an expedited basis. The Counsel's decisions may be appealed to the Deputy Attorney General, who will process appeals within 30 working days. The Deputy Attorney General's decision is final and not subject to further administrative appeal. Authors who are dissatisfied with the final administrative decision may obtain judicial review either by filing an action for declaratory relief or by giving the Department notice and a reasonable opportunity to obtain a court order prohibiting disclosure.

11. Nothing in this policy statement should be construed to alter or waive the Department's authority to seek any remedy available to it to prohibit or punish the unauthorized disclosure of classified information.

12. The policies described herein as applying to DOJ employees also apply with equal force to contractors who are authorized by the Department to have access to SCI or other classified information.

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13. A former DOJ employee or contractor who subsequently receives a security clearance or SCI access approval from another department or agency is permitted to satisfy any obligation regarding publication review by making submissions to the department or agency that last granted the individual's security clearance or SCI access approval.